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K&L Gates LLP P.O. BOX 1135 CHICAGO, IL 60690				
EXAMINER				
TORRES, JOSEPH D				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/523,509

**Applicant(s)**

MARKE ET AL.

**Examiner**

Joseph D. Torres

**Art Unit**

2112

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 20 and 23-38 is/are pending in the application.
- 4a) Of the above claim(s) 36-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 20 and 23-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Election/Restrictions*

Applicant's election without traverse of Group I, claims 20 and 23-35, in the reply filed on 10/10/2007 is acknowledged.

Claims 36-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/10/2007.

### *Response to Arguments*

Applicant's arguments filed 03/30/2009 have been fully considered but they are not persuasive.

The Applicant contends, "Independent Claim 20 includes, among other elements, **"disabling** an error concealment in the voice decoder **if the text/voice indicator indicates** that the data is cellular text telephone modem text data" (emphasis added). As noted by the Examiner, Haimi-Cohen fails to teach this claim element.". That is incorrect. In the Office Action filed 12/30/2008, the Examiner explicitly recites Haimi-Cohen substantially teaches **"disabling** an error concealment in the voice decoder **if the text/voice indicator indicates** that the data is cellular text telephone modem text data" by suppressing an error concealment in the voice decoder if the text/voice indicator indicates that the data is cellular text telephone modem text data

(col. 6, lines 9-15 in Haimi-Cohen teaches that Prior Art speech decoders do not distinguish Baudot-encoded text telephony signals from speech signals; col. 6, lines 15-55 in Haimi-Cohen teaches that the Speech Decoder of Figure 3 distinguishes from the Prior Art in the use Baudot-encoded text reversed CRC indicator allowing for the suppression of error concealment in the voice decoder by providing a bypass mechanism for Baudot-encoded text), but does not include a disable feature for concealment, but instead includes a suppression feature.

The Examiner introduces Brantingham as a teaching on disabling error concealment (col. 2, lines 17-20 in Brantingham teach that error concealment/interpolation is disabled for control data for voice data since concealment/interpolation does not provide useful information about control data for voice data).

The Applicant contends, "Voiced and unvoiced speech is not the same or equivalent to voice data and text data. Speech is made up of phonemes, which are produced by the vocal cords and the vocal tract. Voiced speech is produced when the vocal cords vibrate during the pronunciation of a phoneme. Unvoiced speech, by contrast, does not use the vocal cords. Voiced speech is typically louder than unvoiced speech. Unvoiced speech is typically more abrupt than voice speech. However, both voice speech and unvoiced speech are speech. Neither voice speech or unvoiced speech is "text data" as currently claimed".

The Examiner asserts one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See IN RE

KELLER, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); IN RE MERCK & CO., 800 F.2d 1091, 231 USPQ 375 (FED. CIR. 1986).

Haimi-Cohen teaches voice data and text data. The Examiner only introduces Brantingham as a teaching on disabling error concealment (col. 2, lines 17-20 in Brantingham teach that error concealment/interpolation is disabled for control data for voice data since concealment/interpolation does not provide useful information about control data for voice data). However, col. 15, lines 10-15 in Brantingham recite, "labeled voiced frame, has a length of 49 bits while another entitled unvoiced frame, has a length of 28 bits" indicating that voiced and unvoiced frames are data frames.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 20, 23-27, 31, 32 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haimi-Cohen; R. (US 6606722 B1) in view of Brantingham; George L. (US 4189779 A).

35 U.S.C. 103(a) rejection of claim 20.

Haimi-Cohen teaches sending a text/voice indicator from a cellular text telephone modem to a voice decoder of a communication terminal receiver (col. 1, lines 40-42 teaches that Figures 1 and 3 in Haimi-Cohen provide reversed CRC to indicate Baudot-encoded text telephony signals for communication between a cellular phone sending and receiving terminals; Figure 3 is a voice decoder of a communication terminal receiver), and suppressing an error concealment in the voice decoder if the text/voice indicator indicates that the data is cellular text telephone modem text data (col. 6, lines 9-15 in Haimi-Cohen teaches that Prior Art speech decoders do not distinguish Baudot-encoded text telephony signals from speech signals; col. 6, lines 15-55 in Haimi-Cohen teaches that the Speech Decoder of Figure 3 distinguishes from the Prior Art in the use Baudot-encoded text reversed CRC indicator allowing for the suppression of error concealment in the voice decoder by providing a bypass mechanism for Baudot-encoded text). Note: since error concealment for Baudot-encoded text is useless, Haimi-Cohen teaches that error concealment applied to any Baudot-encoded text is ignored, that is the error concealment applied to any Baudot-encoded text is disabled from released form the speech decoder.

Haimi-Cohen substantially teaches "disabling an error concealment in the voice decoder if the text/voice indicator indicates that the data is cellular text telephone modem text data" by suppressing an error concealment in the voice decoder if the text/voice indicator indicates that the data is cellular text telephone modem text data (col. 6, lines 9-15 in Haimi-Cohen teaches that Prior Art speech decoders do not distinguish Baudot-encoded text telephony signals from speech signals; col. 6, lines 15-55 in Haimi-Cohen teaches that the Speech Decoder of Figure 3 distinguishes from the Prior Art in the use Baudot-encoded text reversed CRC indicator allowing for the suppression of error concealment in the voice decoder by providing a bypass mechanism for Baudot-encoded text), but does not include a disable feature for concealment, but instead includes a suppression feature. However Haimi-Cohen does not explicitly teach the specific use of disabling error concealment.

Brantingham, in an analogous art, teaches use of disabling error concealment (col. 2, lines 17-20 in Brantingham teach that error concealment/interpolation is disabled for control data for voice data since concealment/interpolation does not provide useful information about control data for voice data; Note: However, col. 15, lines 10-15 in Brantingham recite, "labeled voiced frame, has a length of 49 bits while another entitled unvoiced frame, has a length of 28 bits" indicating that voiced and unvoiced frames are data frames). Note: Haimi-Cohen teaches voice data and text data. The Examiner only introduces Brantingham as a teaching on disabling error concealment (col. 2, lines 17-20 in Brantingham teach that error

**concealment/interpolation is disabled for control data for voice data since  
concealment/interpolation does not provide useful information about control data  
for voice data).**

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Haimi-Cohen with the teachings of Brantingham by including use of disabling error concealment. This modification would have been obvious to one of ordinary skill in the art, at the time the invention was made, because one of ordinary skill in the art would have recognized that use of disabling error concealment would have provided an alternative means for preventing access to useless data (col. 2, lines 17-20 in Brantingham teach that error concealment/interpolation is disabled for control data for voice data since concealment/interpolation does not provide useful information about control data for voice data).

35 U.S.C. 102(b) rejection of claim 23.

Figure 1 teaches that CRC error correction code is modified by reversing.

35 U.S.C. 102(b) rejection of claim 24.

Col. 1, lines 40-42 teaches that Figures 1 and 3 in Haimi-Cohen.

35 U.S.C. 102(b) rejection of claim 25.

Col. 1, lines 40-42 teaches that Figures 1 and 3 in Haimi-Cohen.



35 U.S.C. 102(b) rejection of claim 26.

Figures 1 and 3 in Haimi-Cohen teach that if a subsequent received frame is a voice frame CRC is used as an indicator for voice.

35 U.S.C. 102(b) rejection of claim 27.

Figure 1 in Haimi-Cohen provides an adaptive data rate for TTY text transmission embedded in voice transmissions, the data rate determined by the amount of TTY embedded in a block of length B of speech.

35 U.S.C. 102(b) rejection of claim 31 and 32.

Positions in the data frame for CRC error correction redundancy are unused TTY text positions.

35 U.S.C. 102(e)/103(a) rejection of claim 35.

Abstract in Haimi-Cohen.

Claims 28-30, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haimi-Cohen; R. (US 6606722 B1) and Brantingham; George L. (US 4189779 A) in view of Kobayashi; Hisashi et al. (US 6029264 A, hereafter referred to as Kobayashi).

35 U.S.C. 103(a) rejection of claims 28 and 29.

Haimi-Cohen and Brantingham substantially teaches the claimed invention described in claim 20 (as rejected above).

However Haimi-Cohen and Brantingham do not explicitly teach the specific use of additional information is added by the communication terminal receiver to the received data.

Kobayashi, in an analogous art, teaches additional information is added by the communication terminal receiver to the received data (Figure 8 in Kobayashi teaches an AZD device for initially receiving data and adding soft erasure information for supplementing downstream error correction decoders).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Haimi-Cohen and Brantingham with the teachings of Kobayashi by including additional information is added by the communication terminal receiver to the received data. This modification would have been obvious to one of ordinary skill in the art, at the time the invention was made, because one of ordinary skill in the art would have recognized that additional information is added by the communication terminal receiver to the received data would have provided Improved error correction performance (col. 4, lines 22-25 in Kobayashi).

35 U.S.C. 103(a) rejection of claim 30.

Figure 8 in Kobayashi teaches an AZD device for initially receiving data and adding soft erasure information for supplementing downstream error correction decoders. Erasures indicate that the frame having an erasure is corrupted.

35 U.S.C. 103(a) rejection of claim 33 and 34.

Figure 8 in Kobayashi teaches an AZD device for initially receiving data and adding soft erasure information for supplementing downstream error correction decoders. Erasures are an indication of noise in the communication channel.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Torres whose telephone number is (571) 272-3829. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott T. Baderman can be reached on (571) 272-3644. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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